

Appl. No.: 09/939,782

Filed: 08/27/2001

Page 12 of 20**REMARKS/ARGUMENTS**

The amendments above and remarks below are in response to a final Office Action mailed on September 9, 2003. In the Office Action, all of the pending claims (Claims 1-37) were rejected under 35 U.S.C. §§102(b) and 103(a) as being anticipated or obvious over U.S. Patent No. 5,717,989 to Tozzoli et al. ("Tozzoli").

Simultaneous Escrow of the Package and the Payment

The following remarks pertain to independent Claims 1, 21, 25, 36 and 37 and their respective dependent claims.

Tozzoli is generally directed to a trade system for facilitating a transaction between a buyer, a seller and a funder. The funder guarantees payment for transactions processed by the trade system between an approved buyer and a seller which satisfy the funder's predetermined criteria, as described at column 5, lines 36-39 of Tozzoli. In addition, the trade system verifies that each portion of the transaction properly relates to the purchase order and criteria established by the funder or trade system, which is referred to as a "filtering process," as described at column 5, lines 39-42. If filtering is successful, the system generates payment instructions "at appropriate times," as described at column 5, lines 42-43.

As will be described in more detail below, companies wishing to act as buyers and sellers must go through an application process with the funder. In particular, the funder compares buyer or seller profiles to a set of criteria, such as minimum annual revenue or years in business, as a condition of the buyer or seller gaining access to the system, as described at column 5, lines 46-60 of Tozzoli. Once the buyer or seller has access, the funder sets a credit limit for the buyer or seller, as described at column 5, lines 61-67.

After obtaining access to the system, a buyer may place orders to purchase goods from one or more sellers through the system. Each purchase order forms an electronic document and includes at least certain terms, such as a description of the goods, price, quantity and delivery times, as described at column 6, lines 32-37. The system filters

Appl. No.: 09/939,782

Filed: 08/27/2001

Page 13 of 20

purchase orders by comparing them to the screening criteria required by the funder and the trading system, as described at column 7, lines 34-38 of Tozzoli.

If the purchase order meets the criteria, the trade system can generate a payment guarantee on behalf of the funder, guaranteeing payment when the seller meets certain additional conditions, such as shipment of the goods by the seller. When the proposed purchase order meets the filtering criteria, the trade system forwards the purchase order in the form of data to the seller with an indication of the funder's payment guarantee, as described at column 7, lines 54-58 of Tozzoli.

The seller then creates electronic shipping documents including shipping instructions and a commercial invoice and filters the documents to ensure compliance with the original purchase order, as described at column 8, lines 47-56 of Tozzoli. Once the shipping documents are created, they are sent to the carrier or freight forwarder along with the goods, as described at column 8, lines 64-67. The carrier is provided a template by the system to create its own bill-of-lading which is screened against the original purchase order and then forwarded to the seller, the buyer and a buyer broker if involved, as described at column 9, lines 12-17 of Tozzoli.

The carrier then places the goods in transit to the buyer, as described at column 9, line 20 of Tozzoli. Once the goods are placed in transit in step 820 (as shown in Figure 3B of Tozzoli), a copy of the bill-of-lading is sent in step 860 (as shown in Figure 3C of Tozzoli) to the seller. Then, a funds transfer request is sent in step 870 to the seller's bank and funds are transferred to the seller's bank in step 880, such as via a conventional credit card network or a third party electronic document interchange network.

Once funds have been transferred, a notification of funds transfer is received in step 900 by the system and sent to the seller in step 910. Then, the system transmits the data constituting the bill-of-lading to the customer in step 920 and authorizes the carrier to transfer possession of the goods to the buyer in step 930. The buyer receives the bill-of-lading data in step 940 and makes arrangements with the carrier to receive the goods, as described at column 17, lines 5-7 of Tozzoli. Notably, payment is transferred to the seller's bank in step 880 before transfer of the package to the buyer is authorized in step

Appl. No.: 09/939,782

Filed: 08/27/2001

Page 14 of 20

930, and before the buyer is transferred the bill-of-lading data in step 940. Therefore, the seller in Tozzoli receives payment many steps before the buyer receives the package.

As a result, Tozzoli fails to disclose a system in which payment for a package is not distributed to a seller until notification is received of distribution of the package to the purchaser.

Tozzoli describes an alternative payment mechanism at column 17, lines 17-25. In the alternative mechanism, the seller produces data representing an invoice and transmits it to the buyer for payment after submitting the bill of lading. The buyer then responds by creating a payment advice document advising the seller of the payment date and instructing a financial institution to transfer payment to the seller. In the paragraph disclosing the alternative payment mechanism, Tozzoli does not disclose details of the timing of payment by the buyer and transfer of the payment to the seller and, in particular, makes no mention awaiting notification of receipt of the package by the buyer before distributing payment for the package to the seller.

If the same timing of the primary payment mechanism is used in the alternative payment mechanism, the seller of Tozzoli, as indicated in step 860 of Figure 3C, still has the bill-of-lading data long before the buyer receives the bill-of-lading data in step 940. The seller, therefore, would be able to request payment with its bill-of-lading long before the buyer could obtain possession of the package with its bill-of-lading. No suggestion is made by Tozzoli that the payment could be withheld by the buyer until receipt of the package. Even if payment were withheld by the buyer, then the seller would be unprotected because the buyer may receive the package without paying the seller. This results from direct interaction of the buyer and seller to obtain payment in Tozzoli's alternative payment mechanism.

In yet another payment arrangement, the trade system transmits an instruction to the seller's bank to request payment and the seller's bank requests payment from the funder using the trade system, as described at column 17, lines 25-30 of Tozzoli. Similar to the first alternative payment arrangement, this second alternative does not describe the timing of the payment to the seller, disclosing only different parties requesting and

Appl. No.: 09/939,782

Filed: 08/27/2001

Page 15 of 20

receiving payment, much less awaiting notification of shipment to the buyer before distributing payment to the seller.

Tozzoli, therefore, fails to teach or suggest a system in which delivery of a package can be held until payment is received from a purchaser and wherein payment to the seller is held until a notification of delivery to the purchaser is received. Holding payment to the seller until notification that the package has been received by the purchaser protects the purchaser in addition to the seller. This is because the present invention can escrow both the package and the payment at the same time so as to protect both the buyer and the seller. Tozzoli only protects the seller by receiving payment prior to distributing the package to the buyer. None of the remaining cited references alone, or in combination with Tozzoli, teach or suggest escrowing both the payment and the package at the same time.

Claim 1 has been amended to include the recitations of Claim 4 including reciting that 1) the payment system is configured to hold the payment on receipt and to distribute the payment to the seller's account in response to a distribution command, and that 2) the information system is further configured to transmit the distribution command to the payment system in response to receipt of delivery verification information. Claim 4 has been cancelled (without prejudice) for being duplicative of Claim 1. Claim 10 depending from Claim 1 has also been cancelled (without prejudice) for being duplicative of amended Claim 1.

Independent Claims 21, 25, 36 and 37 have been similarly amended to recite a verification of delivery of the package to the purchaser and distribution of the payment to the seller upon receipt of verification. Claims 22, 23, 26, 27 and 30 depended from Claims 21 or 25 and recited verification of delivery to the purchaser and have therefore been cancelled (without prejudice) as being duplicative.

Previous recitation of the delivery, payment and information systems as being independent of the purchaser and the seller has been deleted from Claims 1, 21, 25, 36 and 37 in a broadening amendment. In addition, previous recitation of releasing the package for delivery from the intermediate location has been deleted from Claims 1, 36 and 37 in a broadening amendment to clarify that in some instances payment may be

Appl. No.: 09/939,782

Filed: 08/27/2001

Page 16 of 20

received from the purchaser prior to the package reaching the intermediate location, thereby allowing delivery to be completed without stopping at the intermediate location. For a similar reason, the "moving the package to an intermediate location" has been amended in Claim 25 to recite moving toward an intermediate location and recitation of holding the package at the intermediate location has been deleted.

The rejections of independent Claims 1, 21, 25, 36 and 37 under 35 U.S.C. §102(b) and 103(a) over Tozzoli have therefore been overcome and Claims 1, 21, 25, 36 and 37 should be allowed. The remaining Claims 2, 3, 5-9, 11-20, 24, 28, 29 and 31-34 depend from, and further patentably distinguish, one of Claims 1, 21 and 25, and should therefore also be allowable.

Shipping Without an Initial Payment Guarantee for the Seller

The following remarks pertain to independent Claim 35.

Although Tozzoli provides for the electronic communication of shipping documents and coordinates payment for the goods, Tozzoli's system still operates in a manner that closely resembles the use of a letter of credit. Similar to a letter of credit, companies wishing to act as buyers and sellers must go through an initial application process with the funder to obtain access to the system, i.e., the funder is the same as the bank approving the letter of credit for the buyer prior to the seller shipping the goods. "To obtain access to the system, companies wishing to act as buyers and sellers go through an application process supervised by a funder. . . After obtaining access to the system, a buyer may place orders to purchase goods (in the form of a data input) from one or more sellers through the system." See column 5, lines 47-51 and column 6, lines 32-34 of Tozzoli.

Tozzoli describes the use of the funder, and the credit approval process, as providing a guarantee that the seller will be paid if the buyer's criteria are met as determined by the funder's filtering of various shipping documents and information. "Generally, a funder guarantees payment for transactions processed by the trade system between an approved buyer and a seller which satisfy the funder's predetermined criteria." See column 5, lines 35-39 of Tozzoli. Tozzoli describes the guarantee of the

Appl. No.: 09/939,782
Filed: 08/27/2001
Page 17 of 20

funder as being advantageous because it transfers the risk off of the seller for the entire transaction, starting with the initial trade or purchase transaction. "Although prospective buyers may be unfamiliar to a seller, the seller is willing to trade with such unfamiliar buyers because their offers include a payment guarantee from a funder." See column 7, lines 6-9 of Tozzoli.

Although Tozzoli's system has the advantage of guaranteeing payment to the seller during the entire transaction and shipment process, the up front credit approval process can be onerous, especially for infrequent users of the system. For instance, when performing the credit approval the funder must compare buyer or seller profiles to a set of criteria, such as minimum annual revenue or years in business, as a condition of the buyer or seller gaining access to the system, as described at column 5, lines 46-60 of Tozzoli. Another disadvantage is that the buyer or seller may have insufficient credit to conduct the transaction because the funder sets a credit limit too low for the buyer or seller to conduct the transaction, as described at column 5, lines 61-67 of Tozzoli.

Tozzoli does mention that credit may be disapproved and that the transaction may still be completed. "If the proposed purchase order does not meet the filtering criteria, the buyer may revise its terms, or, in some cases, the buyer may instruct the trade system to forward it to the seller without the funder's payment guarantee and the parties may elect to proceed with the transaction using other non-system avenues for payment guarantees, and using the system as a document manager." See column 7, lines 64-67 and column 8, lines 1-3 of Tozzoli. However, as is evident from the previous statement, the system provides no protection at all if the credit of both parties is not approved for the transaction. The system merely becomes a "document manager."

Tozzoli suggests "non-system" avenues for payment guarantees, but does not mention any details of how this could be done, and use of such non-system avenues would greatly inconvenience the buyer and seller because they would have to consult previously uninvolved guaranteeing third parties. Therefore, a net result Tozzoli's inability to commence shipment of the package without a payment guarantee, then, is that it can deter small or infrequent users from conducting transactions, and shipping packages because of the hassle and/or a lack of creditworthiness.

Appl. No.: 09/939,782
Filed: 08/27/2001
Page 18 of 20

At least one embodiment of the present invention overcomes this difficulty by providing for initial shipment of the packages without guaranteeing payment to the seller, i.e., in a non-guaranteed payment delivery stage. However, the seller is not completely unprotected because at some point the shipping system of the present invention can guarantee payment by securing and escrowing payment from the buyer, which results in a guaranteed payment delivery stage. Eliminating the need for a complicated upfront credit approval process taught by Tozzoli makes the system of the present invention more convenient and accessible by buyers having poor credit, or unwilling to submit extensive information for credit approval. In addition, the time it takes to conduct a transaction can be significantly reduced by reducing or eliminating the up front guarantee process. "An up-front verification of the creditworthiness of the purchaser is not required, allowing shipping to be commenced immediately after agreement by the seller and purchaser to conduct the transaction. The lack of a purchaser credit authorization requirement also expands the pool of potential purchasers to include those without readily available credit," as described at page 6, lines 29-31 and page 7, lines 1-2 of the present application.

Facilitating the switch between the stages are the hold and release systems. The hold system can send a hold request to the delivery service system. The release system can release the hold request upon verification of payment by the purchaser to the payment system. The hold request assures that the package is not delivered to the purchaser unless payment is received from the purchaser for commencement of the guaranteed delivery stage. Another advantage of the hold request is that the package can be returned to the seller, or disposed of, prior to incurring additional shipping costs if payment is not received. Tozzoli does disclose the ability of its system to hold a shipment in response to an embargo at column 17, lines 31-36. However, an embargo is related to government controls, not the need to protect the seller by obtaining payment.

Independent Claim 35 has been amended to recite a system for allowing delivery of a package in non-guaranteed payment and guaranteed payment delivery stages, and capable of holding the package at an intermediate location between the stages while awaiting payment by the purchaser. This eliminates the need for credit checks

Appl. No.: 09/939,782
Filed: 08/27/2001
Page 19 of 20

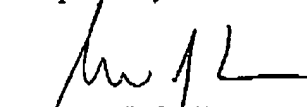
sufficiently thorough to allow an up front guarantee of payment for the seller before the purchaser tenders payment. Neither Tozzoli, nor the remaining cited art, alone or in combination, teach or suggest shipping packages through non-guaranteed and guaranteed delivery stages facilitated by holding the package at an intermediate location while awaiting payment. Therefore, the rejection of Claim 35 under 35 U.S.C. §102(b) over Tozzoli has been overcome and Claim 35 is in a condition for allowance.

Conclusion

In view of the remarks and amendments presented above, it is respectfully submitted that all of the pending claims of the present application are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. The Examiner is requested to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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Appl. No.: 09/939,782

Filed: 08/27/2001

Page 20 of 20

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